

Message Text

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ORIGIN ARA-14

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DRAFTED BY ARA/CEN DWELTER, L/PM:TABOREK:NAB
APPROVED BY ARA SASHELTON
ARA/RPP:COL. QUIGG
PM/SAS:CORRY(PHONE)
M/MO:MAYS
ARA/CEN:WMATTHEWS
DOD:COL. SMITH (SUBSTANCE)

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FM SECSTATE WASHDC
TO AMEMBASSY MANAGUA IMMEDIATE

C O N F I D E N T I A L STATE 104839

E.O. 11652: GDS

TAGS: MILI, NU

SUBJECT: USMILGP MOVE TO EMBASSY

REF: A) MANAGUA 01218 B) MANAGUA 1788

1. WITH REFERENCE TO ISSUE OF BRAZILIAN "MILITARY MISSION"
IN NICARAGUA RAISED PARA. 1 REFTEL A, ARTICLE 25 OF MILI-
TARY MISSION AGREEMENT OF NOVEMBER 19, 1953 (TIAS 2876)
PROVIDES THAT GON "SHALL NOT ENGAGE OR ACCEPT THE SERVICES
OF ANY PERSONNEL OF ANY OTHER FOREIGN GOVERNMENT NOR OF ANY
INDIVIDUAL WHO IS NOT A CITIZEN OF NICARAGUA, FOR DUTIES
OF ANY NATURE CONNECTED WITH THE NICARAGUAN NATIONAL
GUARD EXCEPT BY PRIOR MUTUAL AGREEMENT" BETWEEN USG AND GON.
PROVISIONS OF THIS SORT ARE COMMON TO MILITARY MISSION
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AGREEMENTS CONCLUDED DURING EARLY 1950'S. THIS PROVI-
SION WAS INSERTED IN THE AGREEMENT FOR SOLE BENEFIT OF
USG, AND EXPRESSLY PROVIDES FOR "MUTUAL AGREEMENT" EXCEPTION.
BECAUSE OF SUBSEQUENT LEGISLATION AND POLICY, WE ARE
PROBABLY NO LONGER IN COMPLIANCE WITH CERTAIN ELEMENTS OF
THIS AGREEMENT. WE, THEREFORE, BELIEVE THAT UNDER THE
CIRCUMSTANCES IT WOULD BE INAPPROPRIATE AND LEGALLY

QUESTIONABLE TO ASSERT TO THE GON THAT ANY ACTIVITY

REGARDING BRAZILIAN ADVISORS OR A BRAZILIAN "MISSION" WOULD BE INCONSISTENT WITH ITS OBLIGATIONS UNDER THE 1953 AGREEMENT. DEPARTMENT, THEREFORE, RECOMMENDS AGAINST EMBASSY RAISING ISSUE WITH GON.

2. WITH REGARD TO QUESTION RAISED BY SOMOZA CONCERNING "MOVING THE USMILGP INTO THE EMBASSY", RELEVANT PROVISION OF 1953 AGREEMENT IS ARTICLE 23, WHICH PROVIDES THAT GON "SHALL PROVIDE SUITABLE OFFICE SPACE AND FACILITIES FOR THE USE OF THE MEMBERS OF THE MISSION." THIS, AGAIN, IS PROVISION SOLELY BENEFITTING USG, ADD ONE WHICH WE DO NOT REGARD IN ANY EVENT AS IMPOSING AN OBLIGATION UPON USG TO USE SUCH OFFICE FACILITIES AS MAY BE PROVIDED BY GON. THUS, MOVEMENT OF SECURITY ASSISTANCE PERSONNEL INTO EMBASSY FACILITIES WOULD NOT, IN OUR VIEW, CONTRAVENE THE 1953 AGREEMENT.

3. ISSUES POSED BY MAJOR SOMOZA ARE, HOWEVER, RELEVANT TO LARGER QUESTION OF CONTINUATION OF 1953 MISSION AGREEMENT IN LIGHT OF RESTRICTIONS IMPOSED BY U.S. LAW ON NUMBER AND ROLE OF MILITARY PERSONNEL PERFORMING SECURITY ASSISTANCE FUNCTIONS OVERSEAS. BY VIRTUE OF SECTION 515 OF FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED IN 1977, SUCH PERSONNEL IN NICARAGUA MAY NUMBER NO MORE THAN 6
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AND ARE LIMITED IN ROLE TO PERFORMANCE OF "ACCOUNTING AND OTHER MANAGEMENT FUNCTIONS" WITH RESPECT TO MAP, IMET, AND FMS PROGRAMS. THESE STATUTORY LIMITATIONS RAISE QUESTIONS NOT ONLY UNDER ARTICLES 5 AND 6 OF THE 1953 AGREEMENT (RELATING TO COMPOSITION AND SIZE OF THE MISSION) BUT ALSO, AND MORE IMPORTANTLY, UNDER ARTICLES 1 AND 7 (RELATING TO PURPOSE AND DUTIES OF THE MISSION), AND MAY PUT SERIOUS CONSTRAINT ON OUR ABILITY TO CARRY OUT LETTER OF USG OBLIGATIONS. MOREOVER, THIS SITUATION CARRIES WITH IT POTENTIAL FOR MISUNDERSTANDINGS ON PT OF BOTH THE GON AND THE CONGRESS OVER USG ADHERENCE TO AGREEMENT AND ACTUAL SCOPE OF ACTIVITIES OF SECURITY ASSISTANCE PERSONNEL IN NICARAGUA. FOR THESE REASONS, WE CONTEMPLATE INITIATING FORMAL ACTION TO TERMINATE 1953 AGREEMENT AT APPROPRIATE OPPORTUNITY. WE WOULD APPRECIATE EMBASSY'S VIEWS PRIOR TO TAKING STEPS IN THIS REGARD.

4. WE ARE EXAMINING THE ISSUE OF THE NAME CHANGE TO ODC AND WILL ADDRESS THAT POINT IN AN EARLY CABLE. VANCE

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